

APPENDIX D

SELECTED MONTANA WATER LAWS AND ADMINISTRATIVE RULES

D-1.0 Montana Water Laws (MCAs)

D-1.1 Montana Water Quality Act - Title 75, Chapter 5, MCA

75-5-103. Definitions.

Unless the context requires otherwise, in this chapter, the following definitions apply:

(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(10) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(11) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(31) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

75-5-301. Classification and standards for state waters.

Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

75-5-302. Revised classifications not to lower water quality standards -- exception.

(1) Except as provided in subsection (2), in revising classifications or standards or in adopting new classifications or standards, the board may not formulate standards of water quality or classify state water in a manner that lowers the water quality standard applicable to

state water below the level applicable under the classifications and standards adopted unless the board finds that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307. When the board or department is presented with facts indicating that a body of water is misclassified, the board shall, within 90 days, initiate rulemaking to correct the misclassification.

75-5-318. Short-term water quality standards for turbidity.

(1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the board under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the board under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted by the board under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for activities requiring a discharge permit under rules adopted by the board pursuant to 75-5-401. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5.

75-5-703. Development and implementation of total maximum daily loads.

(1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the

TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) [*pertains to the development of a statewide TMDL schedule*]

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a ***voluntary program*** of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section. (*Emphasis added*)

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in

restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of ***voluntary reasonable land, soil, and water conservation practice*** is necessary; (*Emphasis added*)

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue provided those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312.

75-5-705. Non-impairment of water rights. Nothing in this part may be construed to divest, impair, or diminish any water right recognized pursuant to Title 85.

D-1.2 Montana Water Use - Title 85, Chapter 2, MCA

85-2-329. Definitions.

Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and ***that is not immediately or directly connected to surface water.*** (*Emphasis added*)

(3) "Non-consumptive use" means a ***beneficial use*** of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions. (*Emphasis added*)

(4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.

85-2-330. Basin closure – exceptions.

(1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department [DNRC] may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

- (a) an application for a permit to appropriate ground water;
- (b) an application for a permit to appropriate water for a non-consumptive use;
- (c) an application for a permit to appropriate water for domestic, municipal, or stock use;
- (d) an application to store water during high spring flows; or
- (e) emergency temporary appropriations as provided for in 85-2-113(3).

D-2.0 Administrative Rules of Montana (ARMs)**D-2.1 Surface Water Quality Standards and Procedures - 17.30.6****17.30.602 Definitions**

In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

- (4) "Chlorophyll a" means the mass of chlorophyll a pigment after correction for phaeophytins.
- (5) "Chronic toxicity" means that death or functional impairment occurs or can be expected to occur to organisms exposed for periods of time exceeding 96 hours.
- (7) "Conventional water treatment" means in order of application the processes of coagulation, sedimentation, filtration and disinfection. If determined necessary by the department it also includes taste and odor control and lime softening.
- (8) "**Dewatered stream**" means a perennial or intermittent stream from which water has been removed for one or more beneficial uses.
- (18) "Naturally occurring" means conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams in existence as of July 1, 1971 are natural.
- (19) "Nonpoint source" means the source of pollutants which originates from diffuse runoff, seepage, drainage, or infiltration.
- (21) "Phaeophytins" means the degradation products of chlorophyll.
- (23) "**Reasonable land, soil, and water conservation practices**" means methods, measures, or practices that protect present and reasonably anticipated beneficial uses. These practices include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures. Appropriate practices may be applied before, during, or after pollution-producing activities.
- (26) "Sediment" means solid material settled from suspension in a liquid; mineral or organic solid material that is being transported or has been moved from its site of origin by air, water or ice and has come to rest on the earth's surface, either above or below sea level; or inorganic or organic particles originating from weathering, chemical precipitation or biological activity.

(28) "Settleable solids" means inorganic or organic particles that are being transported or have been transported by water from the site or sites of origin and are settled or are capable of being settled from suspension.

17.30.637 General Prohibitions

(1) State surface waters must be free from substances attributable to municipal, industrial, agricultural practices or other discharges that will:

(a) settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines;

(b) create floating debris, scum, a visible oil film (or be present in concentrations at or in excess of 10 milligrams per liter) or globules of grease or other floating materials;

(c) produce odors, colors or other conditions as to which create a nuisance or render undesirable tastes to fish flesh or make fish inedible;

(d) create concentrations or combinations of materials which are toxic or harmful to human, animal, plant or aquatic life; and

(e) create conditions which produce undesirable aquatic life.

(2) No wastes may be discharged and no activities conducted such that the wastes or activities, either alone or in combination with other wastes or activities, will violate, or can reasonably be expected to violate, any of the standards.

(4) Dumping of snow from municipal and/or parking lot snow removal activities directly into surface waters or placing snow in a location where it is likely to cause pollution of surface waters is prohibited unless authorized in writing by the department.

(5) Until such time as minimum stream flows are established for dewatered streams, the minimum treatment requirements for discharges to dewatered receiving streams must be no less than the minimum treatment requirements set forth in ARM 17.30.635(2) and (3).

(7) Pollution resulting from storm drainage, storm sewer discharges, and non-point sources, including irrigation practices, road building, construction, logging practices, over-grazing and other practices must be eliminated or minimized as ordered by the department.

(8) Application of pesticides in or adjacent to state surface waters must be in compliance with the labeled direction, and in accordance with provisions of the Montana Pesticides Act (Title 80, chapter 8, MCA) and the Federal Environmental Pesticides Control Act (7 USC 136, et seq., (Supp. 1973) as amended). Excess pesticides and pesticide containers must not be disposed of in a manner or in a location where they are likely to pollute surface waters.